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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,590	05/03/2005	Othmar Gerschwiler	05471.0060	2290
22852	7590	03/31/2008	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				ROSENBAUM, MARK
3725		ART UNIT		PAPER NUMBER
03/31/2008		MAIL DATE		DELIVERY MODE
				PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/533,590	GERSCHWILER ET AL.	
	Examiner	Art Unit	
	Mark Rosenbaum	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 January 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 11-13, 15-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 11-13, 15-25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

Claims 11,13,14,16 are rejected under 35 U.S.C. 102(e) as being anticipated by Griebat et al '165. This patent discloses process and apparatus for treating grain including cleaning followed by degerminating/seeding; note particularly claim 4, lines 4-5 and column 5, lines 23-24.

Claims 17-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Salete-Garces '455. This patent shows apparatus to husk and degerminate/seed grains including projections on both a rotor and a stator, the rotor including venting holes.

Claim Rejections - 35 USC § 103

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Griebat et al '165. The elimination of known steps, i.e. intermediate sifting, would have been obvious to one skilled in the art if it were not desired to extract the intermediate sized product.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Griebat et al '165 in view of Salete-Graces '455. Griebat et al does not use a rotor/stator combination having projections which may result in inefficient husking. Salete-Graces '455 solves this problem by disclosing similar process including the use of projections on the rotor/stator. In order to efficiently husk the material, it would have been obvious for one of ordinary skill in the art to modify Griebat et al by using a rotor/stator combination with projections, taught to be desirable by Salete-Garces '455.

Response to Arguments

Applicant's arguments filed 1/15/08 concerning the above rejections have been fully considered but they are not persuasive. It is first noted that contrary to applicant's remarks, claim 16 is an independent claim, not a dependent claim so that its patentability does not stand or fall with independent claim 11.

The examiner disagrees with applicant's interpretation of the Griebat et al '165 patent disclosure. Column 5, lines 23-60 state that the grains are cleaned and then degenerated/seeded. This alone meets the subject matter of claim 16. The patent continues by stating that the seeded grains are then aspirated (lines 45-47) and fed to break rolls. This meets the limitation of 'directly milling the aspirated seeds..' that applicant argues for the independent claim 11.

The comments about Salete-Garces '455 are simply in error. Members 91 do extend parallel to the rotational axis; see particularly figures 5 and 6. This meets the subject matter of the claims rejected by this patent.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Rosenbaum whose telephone number is 571-272-4523. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mark Rosenbaum
Primary Examiner
Art Unit 3725

MR

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/Mark Rosenbaum/
Primary Examiner, Art Unit 3725